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IN THE
COURT OF APPEALS OF INDIANA

NICHOLAS GAETZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 76A03-0710-CR-491
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No.76D01-0606-FB-634

May 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a guilty plea, Nicholas Gaetz appeals his sentence of ten years with two years suspended for dealing methamphetamine, a Class B felony. Gaetz raises the sole issue of whether his sentence is inappropriate given the nature of the offense and his character. Concluding his sentence is not inappropriate, we affirm.

Facts and Procedural History

On June 16, 2005, Gaetz sold a gram of methamphetamine to a confidential informant. On June 7, 2006, the State charged Gaetz with dealing methamphetamine, a Class B felony. On May 14, 2007, Gaetz pled guilty pursuant to a plea agreement under which the State agreed to dismiss another B felony charge of dealing methamphetamine. The State also agreed to recommend a sentence of ten years with a cap of eight years executed. On September 17, 2007, the trial court held a sentencing hearing at which it made the following statement regarding Gaetz's sentence:

> [E]ach offender is an individual and comes with their [sic] own individual history and unfortunately in this case, Mr. Gaetz has significant criminal history, um, which is considered by the court as important and relevant in sentencing. The court also notes as the plea agreement indicates for the record clearly, that a companion case is being dismissed as a result of this disposition that is offered. And if we are talking about consistency between defendants, I don't think this is at all out of line in terms of what the court has done in similar cases where there has been criminal history. So, saying all the things that tend to indicate that I am going to accept the recommendation of the pre-sentence report, which, incidentally, is for the eight years [executed].

Appellant's Appendix at 37-38. Gaetz now appeals.

Discussion and Decision[1]

"Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution 'authorize independent appellate review and revision of a sentence imposed by the trial court.'" Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on reh'g, 875 N.E.2d 218. When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). We must examine both the nature of the offense and the defendant's character. See Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When conducting this

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[1] Gaetz states that he "cannot challenge the ten year sentence since that was set by plea agreement," and therefore challenges only the length of the executed portion of his sentence. Appellant's Brief at 4. However, the plea agreement stated merely that the State would recommend a ten-year sentence. Although a trial court is bound by the terms of a plea agreement it accepts, Ind. Code § 35-35-3-3(e), the trial court is not bound by a mere recommendation, see Robinett v. State, 798 N.E.2d 537, 540 n.2 (Ind. Ct. App. 2003), trans. denied. As the trial court retained discretion to sentence Gaetz to any duration within the statutory limits, Gaetz is not precluded from arguing that his total sentence was inappropriate. See Rivera v. State, 851 N.E.2d 299, 301 (Ind. 2006) (recognizing that a defendant may appeal his sentence under Trial Rule 7(B) if "the trial court is exercising discretion in imposing sentence"). Gaetz's arguments relating as to why the eight-year executed portion of his sentence is inappropriate apply equally to an argument that a ten-year total sentence is inappropriate. Therefore, instead of deeming the appropriateness of Gaetz's total sentence waived, we will address the appropriateness of both the executed and total portions of Gaetz's sentence. See Collins v. State,

inquiry, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. The burden is on the defendant to demonstrate that his sentence is inappropriate. Childress, 848 N.E.2d at 1080.

Here, the trial court sentenced Gaetz to ten years, the advisory sentence for a Class B felony, Ind. Code § 35-50-2-5, with eight years executed. With regard to the nature of the offense, we agree with Gaetz that there is nothing particularly egregious about his offense to distinguish it from the typical offense of dealing methamphetamine as a Class B felony. However, the trial court gave Gaetz the advisory sentence, "the starting point the Legislature has selected as an appropriate sentence for the crime committed." Childress, 848 N.E.2d at 1080.

With regard to Gaetz's character, his criminal history consists of convictions of criminal recklessness, a Class A misdemeanor, in 1987; battery, a Class A misdemeanor, in 1989; two counts of felonious assault[2] in either 1991 or 1992; and battery, a Class A misdemeanor, in 2002. Although none of these convictions are for drug related crimes, at least four of them involve harm to others, two of them are serious felonies, and the most recent occurred fewer than four years prior to the instant offense.[3] See Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999) (recognizing that the significance of a defendant's criminal history depends on the gravity, nature, and number of prior offenses as they relate to the

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639 N.E.2d 653, 655 n.3 (Ind. Ct. App. 1994) (noting our "strong preference to decide issues on their merits"), trans. denied.

[2] These convictions took place in Ohio. It is not clear from the record what level of felony these offenses are.

instant offense).

Gaetz also points out that he pled guilty, thereby extending a benefit to the State. We recognize that a guilty plea often comments positively upon a defendant's character. See Lopez v. State, 869 N.E.2d 1254, 1259 (Ind. Ct. App. 2007), trans. denied. However, Gaetz received a substantial benefit in return for his plea, as the State dismissed another Class B felony pursuant to the agreement. Under these circumstances, Gaetz's plea reveals little about his character. See Fields v. State, 852 N.E.2d 1030, 1034 (Ind. Ct. App. 2006) (noting that the defendant "received a significant benefit from the plea, and therefore it does not reflect as favorably upon his character as it might otherwise"), trans. denied.

In sum, Gaetz has failed to convince this court that an advisory sentence, with the executed portion falling below the advisory, is inappropriate based on the nature of the offense and his character.

Conclusion

We conclude Gaetz's sentence is not inappropriate based on the nature of the offense and his character.

Affirmed.

BAKER, C.J., and RILEY, J., concur.

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[3] Also, we note that although Gaetz acquired no convictions between 1992 and 2002, he was incarcerated for seven years of this period.